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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

THE SCO GROUP, INC., a Delaware corporation,

Plaintiff and Counterclaim-
Defendant,

vs.

NOVELL, INC., a Delaware corporation,

Defendant and Counterclaim-
Plaintiff.

**NOVELL, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
OR PRELIMINARY INJUNCTION**

Case No. 2:04CV00139

Judge Dale A. Kimball

Novell, Inc. (“Novell”) moves the Court for partial summary judgment as to its Sixth, Seventh, Eighth, and Ninth Claims for Relief for constructive trust, breach of fiduciary duty, conversion, and accounting, respectively. In the alternative, Novell moves for a preliminary injunction ordering an accounting and imposing a constructive trust over all monies wrongfully held by The SCO Group, Inc. (“SCO”) pursuant to its 2003 Agreements with Sun Microsystems, Inc. (“Sun”) and Microsoft Corporation (“Microsoft”). These monies – amounting to approximately \$25,846,000 plus interest – consist of royalties, fees, and other amounts that SCO collected from these Agreements and then failed to remit to Novell pursuant to SCO’s duties under the Asset Purchase Agreement (“APA”) between Novell and The Santa Cruz Operation (“Santa Cruz”), dated September 19, 1995.

Federal Rule of Civil Procedure 56(c) permits the Court to grant partial summary judgment if the pleadings, discovery, and affidavits show that there is no genuine issue of material fact and that Novell is entitled to judgment as a matter of law. Here, the undisputed facts show that SCO breached its fiduciary duties under the agency provisions of the APA, and wrongfully converted SVRX Royalties by failing to account for and remit millions of dollars of revenues to which Novell holds “all right, title and interest.” Moreover, these facts separately give rise to constructive trust and accounting claims under California law. Accordingly, summary judgment should be granted for Novell as to each of these claims, with relief in the form of an accounting and a constructive trust.

Even if the Court were to deny summary judgment, Federal Rule of Civil Procedure 65 permits the Court to grant a preliminary injunction where, as here, Novell can show: (1) substantial likelihood of prevailing on the merits; (2) irreparable injury if the injunction is denied; (3) greater injury to Novell absent the injunction than the injury SCO would suffer under

the injunction; and (4) lack of adverseness to the public interest. The facts and law strongly favor Novell on any one of its breach of fiduciary duty, conversion, or constructive trust claims, and Novell can show irreparable injury outweighing any harm to SCO. Therefore, Novell requests that the Court issue a preliminary injunction that orders an accounting of the SVRX Royalties flowing from SCO's 2003 Agreements with Sun and Microsoft and then imposes a constructive trust thereon.

DATED: September 29, 2006

ANDERSON & KARRENBERG

/s/ Heather M. Sneddon
Thomas R. Karrenberg
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-and-

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of September, 2006, I caused a true and correct copy of **NOVELL, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION** to be served via CM/ECF to the following:

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